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7	Attorneys for Plaintiff PAULA DONALD	
8	UNITED STATES DISTRICT COURT	
9	NORTHERN DISTRICT OF CALIFORNIA	
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11	PAULA DONALD, on behalf of herself, all	CASE NO.: 3:14-CV-05416-WHO
12	others similarly situated, and the general	CASE TO.: 3.11 CV 03 110 WITO
13	public,	ORDER GRANTING MOTION FOR
14	Plaintiff,	PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
15	VS.	
16	XANITOS, INC., a Delaware corporation,	
17	KAISER FOUNDATION HOSPITALS, a	
18	California corporation, and DOES 1 through 10, inclusive,	
19	Defendant.	
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28	Donald v. Xanitos / Case No. 3:14-cv-05416-WHO	
	Order Granting Motion for Preliminary Approval of Class Action Settlement	

ORDER

Before the Court is the Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Motion") (Dkt. No. 63) and the pertinent materials filed with that motion, the supplemental briefing (Dkt. No. 67) and response to order to show cause (Dkt. No. 72). The papers filed with the response satisfied the Court's questions concerning the settlement and, for good cause shown, and as more fully explained below, the Motion is GRANTED. The hearing scheduled for December 14, 2016 is VACATED.

The Court ORDERS as follows:

- 1. **Preliminary Certification of the Settlement Class.** For the purposes of settlement only, the Court preliminarily finds that the proposed Class, as defined in the Stipulation and Agreement to Settle Putative Class Action between the Parties and Addendum thereto (collectively, the "Settlement Agreement"), meets the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure. Accordingly, the Court certifies for settlement purposes only the following proposed California Rule 23 Classes:
 - (1) All persons who provided environmental services to Defendants within the State of California as a contractor for Xanitos, and who Xanitos classified as an independent contractor; and
 - (2) All persons who provided environmental services to Defendants within the State of California as a supervisor, manager or similar or equivalent designation, as an employee of Xanitos, and who Xanitos classified as an exempt employee.

Not later than fifteen (15) days after the date of this Order, Defendant will provide the Claims Administrator with a list of the names and last known addresses and phone numbers of the Class, including their dates of employment.

2. **Nullification.** This Order will be null and void and of no force or effect, and this action will proceed as though a class had never been certified, if the Settlement Agreement is not finally approved by the Court or if the Settlement Agreement, after being finally approved by the

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Court, is invalidated on appeal or terminated pursuant to its own terms.

- 3. Class Representative. The Court grants approval to the Named Plaintiff Paula Donald to serve as Class Representative with respect to the settlement.
- 4. Class Counsel. The Court appoints as Class Counsel for the Settlement Class Leonard T. Emma, Michael R. Hoffman, and Stephen Noel Ilg, of the law firm of Hoffman Employment Lawyers (580 California St., Suite 1600, San Francisco, CA 94104).
- 5. **Preliminary Approval of the Agreement.** The proposed settlement set forth in the Settlement Agreement appears, upon preliminary review, to be fair, reasonable and adequate and is therefore preliminarily approved subject to further consideration thereof at the Final Approval Hearing, as provided in Paragraph 7 below. It is found that the Notice of the proposed Settlement should be given as provided in the Agreement and set forth in Paragraph 8 below.
- Claims Administrator. Simpluris, Inc. is approved as the Claims Administrator 6. of the settlement as set forth in the Agreement.
- 7. **Fairness Hearing.** Under Rule 23(e) of the Federal Rules of Civil Procedure, a Fairness Hearing will be held on March 29, 2017 at 2:00 p.m. to consider final approval of the Agreement. The date and time of the Final Approval Hearing shall be set forth in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted by the Court.
- 8. Notice to the Class. The Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing (the "Notice") attached as Exhibit A to the Addendum to Settlement Agreement is approved. The Court orders that the Claims Administrator mail the Notice as set forth in the Settlement Agreement to the members of the Class.
 - 9. **Exclusion from the Settlement.** Any member of the Class who wishes to not

¹ The parties may file a stipulation and proposed order suggesting a dfferent date for the fairness hearing within the next week in the event the date chosen by the Court is inconvenient for the parties or Claims Administrator.

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participate in the settlement may request exclusion from the class by submitting a signed request for exclusion to the Claims Administrator. To be effective, such request for exclusion must include the individual's name, contact information, social security number, and an unequivocal statement that the individual requests to be excluded from the class, and it must be post-marked within sixty (60) days following the date of the initial mailing of the Settlement Notice Packet.

10. **Objections.** Any Settlement Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must do so first in writing. To be considered, such objections must be mailed to the Court and postmarked on or before sixty (60) days after the initial mailing of the Settlement Packet by the Claims Administrator.

An objector who timely submits a written objection may appear at the Fairness Hearing either in person or through counsel hired by the objector provided the objector includes a clear statement indicating that he or she intends to appear at the Fairness Hearing. An objector may withdraw his or her objections at any time. No Settlement Class Member may appear at the Fairness Hearing or appeal from the Final Approval Order unless he or she has mailed a timely objection that complies with the procedures provided herein. Any Class Member who requests exclusion from the class may not submit objections to the settlement.

- 11. At least 14 days before the deadline to object to or opt out of the Settlement, Class Counsel shall file their motion for attorneys' fees, costs, and class representative enhancements.
- 12. Website. Class counsel shall publish a website where Class Members can obtain more information regarding the settlement at http://www.employment-lawyers.com/xanitos.
- 13. **Effect of the Agreement.** All members of the Settlement Class who do not timely and properly exclude themselves from the class will be bound conclusively by all of the terms of the Settlement Agreement, if finally approved, and by any judgment entered upon final approval. Class Counsel will file returned exclusion statements with the Court as set forth in the Agreement.

- 14. **Voiding the Agreement.** Pursuant to the Settlement Agreement, if ten percent (10%) or more of the members of the Class elect to be excluded from the Class, Defendant will have the right, in its sole discretion, to void this Settlement Agreement by serving a written notice on Class Counsel as set forth in the Settlement Agreement. If Defendant serves a timely notice, then the Settlement Agreement becomes null and void and this action will resume as it existed immediately prior to the execution of the Settlement Agreement.
- 15. **Order for Settlement Purposes.** The findings and rulings in this Order are made for the purposes of settlement only and may not be cited or otherwise used to support the certification of any contested class or subclass in this action or any other action.
- 16. **Stay.** All proceedings in this action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are stayed and suspended until further order of the Court.
- 17. Use of Agreement and Ancillary Terms. Neither the Settlement Agreement (whether or not it is finally approved) nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including matters associated with the mediation) will be admissible or offered into evidence in any action related or similar to this one for the purposes of establishing, supporting or defending against any claims that were raised or could have been raised in this action or are similar to such claims.

IT IS SO ORDERED.

Dated:_December 9, 2016

WILLIAM H. ORRICK UNITED STATES DISTRICT COURT JUDGE

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